

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Amore Coffee Company)
Personal Property Account No. 133001) Davidson County
Tax year 2007)

INITIAL DECISION AND ORDER

Statement of the Case

The Davidson County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

APPRAISAL	ASSESSMENT
\$54,400	\$16,320

On July 2, 2007, the State Board of Equalization ("State Board") received an appeal by the taxpayer. As indicated on the appeal form, the property in question was not appealed to the Metropolitan Board of Equalization ("county board") during its regular 2007 session.

The undersigned administrative judge conducted a hearing of this matter on September 18, 2007 in Nashville. In attendance at the hearing were the appellant Lori K. Weir, of the Amore Coffee Co. ("Amore"), and Assessor's representative Kenneth Vinson.

Findings of Fact and Conclusions of Law

Amore sells take-out coffee and other beverages at its 4130 Lebanon Pike location in Hermitage. In 2006, when this account was added to the Davidson County commercial/industrial personal property tax roll, Amore did not timely file the prescribed Schedule "B" with the Assessor's office. Ms. Weir obtained relief from the ensuing "forced assessment" by filing a complete listing of the tangible personal property used (or held for use) in the business with the county board. See Tenn. Code Ann. section 67-5-903(d). For tax year 2006, that property was ultimately appraised at \$4,393.

A similar sequence of events unfolded in 2007. According to Ms. Weir's testimony, she did not receive the blank tangible personal property schedule form which the Assessor had mailed to Amore's mailing address of record (620 Templewood Court, Nashville, TN 37214) by February 1 pursuant to Tenn. Code Ann. section 67-5-903(a). Further, it was not until about July 1, 2007 that Ms. Weir received notice of a forced assessment for that tax year in the amount of \$16,320 (based on an appraised value of \$54,400). By then, unfortunately, the deadline shown on the notice for complaint to the county board (June 15, 2007) had passed; so Ms. Weir promptly submitted this appeal to the State Board.

Generally, an appeal of a forced assessment (or other property assessment) to the State Board must be preceded by a complaint and appearance before the local board of equalization

unless the taxpayer was not duly notified of such assessment. The validity of a notice of forced assessment does not depend on whether or when it is actually received by the taxpayer; rather, Tenn. Code Ann. section 67-5-903(c) merely requires that the notice of forced assessment be sent to the taxpayer's "last known address." There is no question that the Assessor met this requirement.

However, Tenn. Code Ann. section 67-5-1412(e) affords a taxpayer the right to a hearing to establish "reasonable cause" for failure to appeal to the local board of equalization. The Assessment Appeals Commission (appointed by the State Board under authority of Tenn. Code Ann. section 67-5-1502) has historically constructed the quoted phrase to mean some circumstance beyond the taxpayer's control (such as disability or illness). See, e.g., Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994); John Orovets (Cheatham County, Tax Year 1991, Final Decision and Order, December 3, 1993).

In a previous case involving the non-receipt of an assessment change notice, the Commission held that:

...[T]here was testimony only that the notice was not received, and we find no basis in this fact alone to demonstrate reasonable cause for failure to appeal to the county board of equalization.

Michael & Stephanie Davis (Davidson County, Tax Year 1993, Final Decision and Order, November 13, 1995), p. 1.

But later, in Mary M. Headrick and Detlef R. Matt (Knox County, Tax Year 1993, Order of Remand, November 5, 1996, the Assessment Appeals Commission found reasonable cause where the taxpayer claimed not to have received a correctly-addressed assessment change notice. This decision was attributed to "observing Ms. Headrick's demeanor and evaluating her testimony **concerning the history of mail delivery in her neighborhood.**" *Id.* at p. 2. [Emphasis added.]

Likewise, in this proceeding, the appellant testified that she had experienced chronic mail delivery problems in her neighborhood when the 2007 Tax Schedule "B" and assessment change notice were sent by the Assessor's office. This assertion was buttressed by a letter (submitted after the hearing) from the United States Postal Service's Donelson Station Manager Station stating that "several different carriers...were carrying this route" during the relevant time period.

Based on the ruling in the factually similar Headrick case, the administrative judge respectfully recommends acceptance of this direct appeal. The standard valuation of the tangible personal property listed on the taxpayer's completed schedule is \$22,287. In order to achieve equalization, this value should be reduced by the overall 2007 appraisal ratio for Davidson County, as determined by the State Board pursuant to Tenn. Code Ann. section 67-5-1606 (.8780). The resulting appraisal is \$19,570 (after rounding).

Order

It is, therefore, ORDERED that the following values be adopted for tax year 2007:

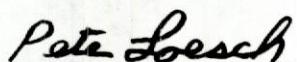
APPRAISAL	ASSESSMENT
\$19,570	\$ 5,870

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 7th day of November, 2007.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Lori K. Weir, Amore Coffee Company
Kenneth Vinson, Davidson County Assessor's Office
Jo Ann North, Davidson County Assessor of Property